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struck and run over by the wagon, the allegations were sufficient to warrant a recovery on a showing that the child ran across the street and ran into the wagon.

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NORFOLK & W. RY. CO. v. GEE.

Jan. 18, 1906.

[52 S. E. 572.]

**1. Torts—Nature of Liability.**—Where an act is lawful in itself, injury resulting therefrom is not actionable, unless the act is done at a time, or in a manner, or under circumstances indicative of a want of proper regard for the rights of others.

[Ed. Note.—For cases in point, see vol. 45, Cent. Dig. Torts, §§ 1-5.]

**2. Railroads—Operation—Frightening Animals—Actions for Injuries—Pleading.**—A declaration against a railroad for injuries caused by plaintiff's horse taking fright at a hand car standing near a crossing is demurrable, where it fails to show that the hand car was by its nature an object calculated to frighten horses of ordinary gentleness.

[Ed. Note.—For cases in point, see vol. 37, Cent. Dig. Negligence, § 182.]

**3. Same—Improper Crossings—Actions for Injuries—Pleading—Proximate Cause.**—A declaration against a railroad for personal injuries sustained at a crossing, alleging as negligence defendant's failure to keep its right of way at the crossing sufficiently smooth and level to admit of safe and speedy travel over the crossing, as required by Va. Code 1904, p. 669, § 1294d, cl. 39, is demurrable, where it fails to state the nature of the defects complained of, or facts showing that the condition of the crossing was the proximate cause of the injuries sustained, which, it was alleged, resulted from plaintiff's horse taking fright near the crossing and plaintiff's inability to control the horse, owing to the defective crossing.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1108, 1109.]

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PENDLETON'S ADM'R v. RICHMOND, F. & P. R. Co.

Jan. 18, 1906.

[52 S. E. 574.]

**1. Trial—Demurrer to Evidence.**—Evidence, on demurrer thereto, must be taken as true.

[Ed. Note.—For cases in point, see vol. 46, Cent. Dig. Trial, § 355.]

**2. Carriers—Duty of Passenger—Ordinary Care.**—The fact that one waiting at a railroad station is to be regarded as a passenger, and entitled to that high degree of care for his protection due from a com-